

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

TERRY JOHNSON,)
Petitioner,)
v.) Civil Action
MARTY C. ANDERSON, Warden,) No. 09-3299-CV-S-GAF-H
United States Medical Center for)
Federal Prisoners,)
Respondent.)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges his confinement. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are without merit, it will be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner alleges that he is illegally in custody, and that he is entitled to release because he is no longer mentally ill. After a Show Cause Order, a response was filed. Thereafter, petitioner filed a traverse on his own behalf.

A review of the file and records in the case indicates that petitioner was committed to the custody of the Attorney General, pursuant to 18 U.S.C. § 4246, on February 26, 2009. United States v. Johnson, Case No. 08-3418-CV-S-RED. His commitment was affirmed by the Eighth Circuit Court of Appeals on July 27, 2009. United States v. Johnson, Appeal No. 09-1633. The record establishes that petitioner suffers from a mental disease or defect that is directly connected

to a substantial risk of danger if he were to be released from confinement, and that no state placement is available. It is also clear from the record that he received all the rights to which he was due at the commitment hearing. Further, the annual report required in this case under 18 U.S.C. § 4247(e)(1)(B) is not yet due. Accordingly, because petitioner is lawfully committed pursuant to the mental health statutes at this time, it must be recommended that the petition herein for writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
Chief United States Magistrate Judge

Date: 11/10/09

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the Chief United States Magistrate Judge.